

In re Application of DELO et al.  
Serial No. 10/075,871

### REMARKS

The Office action has been carefully considered. Claims 1, 12, 21, 26, 30, and 35 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 6,397,381 B1. Also, claims 1-35 were rejected under 35 U.S.C. § 102(e) as being anticipated by Kelly, "Gain Control of Application Setup and Maintenance with the New Window Installer," (hereinafter Kelly).

By present amendment, the specification has been amended. Applicants submit that the rejections are traversed as explained in the following remarks, and that the application is otherwise in good form for allowance. Reconsideration is respectfully requested.

Further, the references in the information disclosure statement previously submitted in the parent case that are not marked with the examiner's initials in the Office action will be resubmitted separately for the Examiner's convenience, although applicant notes that as a continuation application, they are to be considered by the Examiner from the parent application, and need not be resubmitted (see MPEP § 609(I)(A)(2)).

#### Rejection under the Judicially Created Doctrine of Obviousness-type Double Patenting

Claims 1, 12, 21, 26, 30, and 35 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 6,397,381 B1. The Office action indicated that a terminal disclaimer may be timely filed to overcome the non-statutory double patenting rejection. Applicants file herewith a terminal disclaimer to overcome the non-statutory double patenting rejections and respectfully request withdrawal of these rejections.

In re Application of DELO et al.  
Serial No. 10/075,871

Rejections under Section 102(e)

Claims 1-35 were rejected under 35 U.S.C. §102(e) as being anticipated by Kelly. Applicants submit that Kelly is a publication of the assignee, which generally describes a product that embodies the invention. This reference appeared in the Microsoft Systems Journal dated September, 1998. The claimed invention was conceived and reduced to practice by the Applicants in this country prior to the publication of the Microsoft Systems Journal. Attached hereto as Exhibit "1" is a copy of the Declaration submitted in the parent application 09/158,126 by the author of Kelly establishing that the invention described therein was conceived and reduced to practice by the named applicants prior to the publication date of Kelly, that Kelly prepared the article with the assistance of at least one of the joint inventors, and that the article describes one embodiment of the invention.

Also attached hereto as Exhibit "2" is a copy of the Declaration submitted in the parent case 09/158,126 by the available inventors, establishing that the invention that was claimed in the parent case was conceived and reduced to practice by the named applicants prior to the publication date of Kelly. Although the claims of the present application are not identical to those in the parent case, (the obviousness-type double patenting rejection indicates that the Examiner believes some are at least similar), applicants have provided Exhibit "2" as further evidence that the subject matter disclosed and claimed in the present application was likewise invented prior to Kelly.

Applicants submit that this evidence overcomes the claim rejections based on Kelly, and respectfully request withdrawal of these rejections.

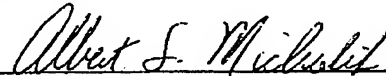
In re Application of DELO et al.  
Serial No. 10/075,871

### CONCLUSION

In view of the foregoing remarks, it is respectfully submitted that claims 1-35 are patentable over the prior art of record and that the application is in good and proper form for allowance. A favorable action on the part of the Examiner is earnestly solicited.

If in the opinion of the Examiner a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney at (425) 836-3030.

Respectfully submitted,



Albert S. Michalik, Reg. No. 37,395  
Attorney for Applicant  
Law Offices of Albert S. Michalik, PLLC  
704 - 228th Avenue NE, Suite 193  
Sammamish, WA 98074  
(425) 836-3030  
(425) 836-8957 (facsimile)